IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 54 of 1993
with
ITR NO. 272/93, ITR NO. 121/96,
ITR NO. 15/97, ITR NO. 19/97,
ITR NO. 132/96 & ITR NO. 49/97

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME TAX, GUJARAT-III

Versus

KIRANBHAI H SHELAT

COMMISSIONER OF INCOME TAX, GUJARAT-III
Versus
NARANBHAI S. PATEL

CHIMANBHAI H. PATEL
Versus
COMMISSIONER OF INCOME TAX, GUJARAT-II

MUKESHBHAI J. BHATT
Versus

COMMISSIONER OF INCOME TAX, GUJARAT-II

DINESHCHANDRA S. SHAH
Versus
COMMISSIONER OF INCOME TAX, GUJARAT-I

DAYALJIBHAI J. PATEL
Versus
COMMISSIONER OF INCOME TAX, AHMEDABAD

Appearance:

ITR Nos. 54/93 & ITR No. 272/93
Mr. P.G.Desai & Mr. Mihir Joshi with Mr.M.R.Bhatt,
Advocates for the Revenue.
Mr. S.N.Divetia, Advocate for the respondents.

ITR Nos. 121/96, ITR No. 15/97 and ITR No. 19/97
Mr.Mukesh M. Patel, Advocate for the petitioners.
Mr. P.G.Desai & Mr. Mihir Joshi with Mr.M.R.Bhatt,
Advocates for the Revenue.

ITR No. 132/96
Mr. S.N.Divetia, Advocate for the petitioner.
Mr. P.G.Desai & Mr. Mihir Joshi with Mr.M.R.Bhatt,
Advocates for the Revenue.

ITR No. 49/97
Mr. S.N.Soparkar, Advocate for the petitioner.
Mr. P.G.Desai & Mr. Mihir Joshi with Mr.M.R.Bhatt,
Advocates for the Revenue.

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH
Date of decision: 27/04/98

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

This group of matters alongwith similar other matters was argued together and at the instance of both the sides, is being disposed of by this common judgement. The questions which have been referred to this Court by

the Income Tax Appellate Tribunal under Section 256(1) of the Income Tax Act, 1961 in these references are as under:-

ITR No.54/93, (At the instance of the Revenue for the Assessment Years 1984-85 to 1987-88):-

"Whether, the Appellate Tribunal is right in law and on facts in directing the ITO to allow 40% of the incentive bonus as deduction and include the net amount after such deduction in the salary income?"

ITR No. 272/93, (At the instance of the Revenue for the Assessment Years 1983-84 to 1987-88):-

"Whether, the Appellate Tribunal is right in law and in holding that the Commissioner of Income Tax was not justified in directing the assessing officer to withdraw the deduction allowed by him at 40% of the gross receipts?"

ITR Nos. 121/96, 15/97 and 19/97, (At the instance of the assessee for the Assessment Years 1987-88 to 1989-90):-

"Whether the ITAT is right in law in holding that no deduction is available to the assessee as expenses out of the Incentive Bonus Commission received by him as a Development Officer of Life Insurance Corporation of India?"

ITR No.132/96, (At the instance of the assessee for the Assessment Years 1986-87 to 1988-89):-

"Whether on the facts and circumstances of the case, the Tribunal was justified in holding that incentive bonus earned by the assessee as Development Officer of LIC was part of salary within the ambit of Section 17 of the Act and no deduction on account of expenses were permissible?"

ITR No. 49/97, (At the instance of the assessee for the Assessment Years 1987-88 to 1990-91):-

"Whether in the facts and circumstances of the case the Tribunal was right in law in holding that the incentive bonus was part of the salary

by virtue of Section 17(1)(iv) and the only deduction admissible is under Section 16(1) of the Income Tax Act?"

2. I.T.R No. 54/93 relates to the Assessment Years 1984-85 to 1987-88. The assessee was working as a Development Officer in the Life Insurance Corporation of India and in addition to the salary and perquisites, he was also given "incentive new business bonus" from the LIC. The assessee claimed deduction of expenses incurred for earning the incentive bonus to the tune of 50 per cent of the incentive bonus. The claim was allowed by the ITO in the original assessment years, but later the Commissioner by his common order dated 31.1.1989 passed under Section 263 of the Act, directed the ITO to withdraw the deduction of expenses on the ground that incentive bonus was part of `salary' and as such what all the assessee was entitled to, was standard deductions admissible under Section 16(1) of the Act and that the expenses incurred in earning the incentive bonus were not allowable. The assessee appealed before the Tribunal against the common order dated 31.1.1989, by which the Commissioner had directed the ITO to withdraw the expenses allowed from incentive bonus commission for these years. The Tribunal took note of the fact that the Development Officer was an employee of the Life Insurance Corporation, who was not paid incentive bonus by way of remuneration because it was expressly excluded from the definition of annual remuneration contained in Rule 2(c) of the LIC Development Officers' Service Rules 1989. It was found that the incentive bonus was not akin to the ordinary bonus given under the Payment of Bonus Act. The Tribunal held that the incentive bonus represent additional profits, which could be classified and charged as income under the head `Salaries' because of the wide definition of the term "salary" under Section 17, which included `profits in lieu of or in addition to any salary or wages'. The Tribunal followed the decision of the Bombay Tribunal in the case of ITO Vs. Narendra V. Patel, reported in (1983) 21 Taxman 45 (Trib.), in which it was laid down that the expenditure incurred for earning the incentive bonus was liable to be deducted at the starting point itself under Section 15 of the Act while determining the amount of incentive bonus, which was chargeable to tax and observed that this view was based on the principle laid down by the Hon'ble Supreme Court in the case of Bhadridas Daga Vs. CIT, reported in 34 ITR 10 and Poona Electric Supply Company Limited Vs. CIT, reported in 57 ITR 521. It was observed that the decision of the Bombay Tribunal in ITO Vs. Narendra V.

Patel (supra) was followed by all the Benches of the Tribunal. In respect of the decision of the Andhra Pradesh High Court in K.A.Choudary Vs. CIT, reported in 183 ITR 29, on which reliance was placed on behalf of the Department, the Tribunal observed that in that case the Court did not consider the question whether the expenses incurred for earning the incentive bonus were liable as deduction at the starting point itself in view of the fact that incentive bonus did not represent salary in the ordinary sense but it represented salary in view of the definition given in Section 17 of the Act. It was held that, that aspect was considered by the Bombay Tribunal in ITO Vs. Narendra V. Patel (supra), in which it was held that per se it was not possible to draw an inference that the legislature had intended to take into account cases of incentive bonus without reducing it by the expenditure incurred for earning it and that the expenditure incurred by the assessee for the purpose of earning incentive bonus should be reduced therefrom at the starting point itself i.e. at the point when it is treated under the income chargeable under the head "salary". The Tribunal accordingly held that the expenses incurred for earning the incentive bonus by the development officers were allowable as deduction and that net incentive bonus alone was includible in the computation of income under the head salary. The Tribunal found on the facts of the case that there was no justification for not allowing 40% of the incentive bonus as had been allowed in several cases cited before it. The Tribunal found that there was, however, no reason to allow a higher deduction at 50 per cent, as was done by the ITO.

3. In ITR No. 272/93 which relates to the Assessment Years 1983-84 to 1987-88, similar view was taken by the Tribunal by it's order dated 7.8.92, in which the Tribunal dealing with a similar claim of the assessee Development Officer, held that the CIT was not justified in directing the Assessing Officer to withdraw the deduction allowed by him at 40 per cent of the gross receipts.

4. ITR Nos. 121/96 and 15/97 are filed by the same assessee who was also a Development Officer and had claimed deduction of 50 per cent from the incentive bonus as expenditure for earning the same, during the previous years to the assessment year - 1987-88 and 1989-90 respectively. ITR No.19/97 is also by an assessee who was a Development Officer and had claimed 50 per cent of the incentive bonus as expenditure for earning the same. In these cases, the Tribunal however took an opposite

view on the identical contentions and came to a finding on the basis of the decisions of the Orissa High Court in the case of CIT Vs. Govind Chandra Pani, reported in 213 ITR 783, CIT Vs. Bijoy Kishore Kapoor (1993) 202 ITR 129; and the Andhra Pradesh High Court in K.A.Chaudhary Vs. CIT (1990) 183 ITR 29 and CIT Vs. B. Chinniah & ors (1995) 214 ITR 368 that the amount of incentive bonus received by the Development Officer was part of his salary and no deduction was to be allowed except the standard deductions under Section 16 of the Act.

5. In ITR 132/96, the assessee Development Officer had claimed in his return for the Assessment Year 1986-87 to 1988-89 that the incentive bonus received from LIC should be excluded from salary and be assessed under the head professional income. He claimed that the deduction at the rate of 50 per cent of such incentive bonus on account of expenses incurred for earning such bonus should be allowed. This claim was rejected by the AO on the ground that the incentive bonus was a part of his salary and the assessee was entitled only to standard deductions under Section 16(1) of the Act. In appeal, the Deputy Commissioner of Income Tax (Appeals) accepted the assessee's claim and held that 40 per cent of the incentive bonus was to be allowed as deduction to the assessee. Following the decisions of the Andhra Pradesh High Court in K.A.Chaudhary Vs. CIT (supra) and the Orissa High Court in the case of CIT Vs. Govind Chandra Pani (supra), the Tribunal allowed the appeal of the Revenue on this count and reversed the order of the appellate authority.

6. In ITR No. 49/97 which is made at the instance of the assessee - Development Officer in respect of Assessment Years 1987-88 to 1990-91, the assessee had claimed 50 per cent of bonus as deduction on account of expenses incurred towards such incentive bonus. The Assessing Officer however, held that the incentive bonus was a part of salary as per Section 17(1)(iv) of the Act and deductions were available only under Section 16(1) of the Act. The Deputy Commissioner (Appeals) allowed the deduction claimed, but the Tribunal, following the decisions of the Andhra Pradesh High Court in K.A.Chaudhary Vs. CIT (supra) and CIT Vs. Govindchandra Pani (supra), held that the issue was covered and set aside the order of the Deputy Commissioner, restoring the order of the Assessing Officer.

7. We first deal with certain admitted aspects of the matter. The terms and conditions of service of the

Development Officers are governed by the Life Insurance Corporation of India Development Officers (Revision of Certain Terms and Conditions of Service) Rules, 1989. A copy of these Rules and certain other admitted correspondence between the Central Board of Direct Taxes (CBDT) and the Life Insurance Corporation of India, are placed on record at the instance of both the sides and their genuineness is admitted. `Development Officer' is defined in Rule 2(h) of these Rules, which were framed in exercise of the powers vested in the Central Government under Section 48 of the Life Insurance Corporation Act, 1958 and it means a whole-time salaried employee of the Corporation belonging to Class II appointed as Development Officer and includes any person who became an employee of the Corporation on the 1st day of September, 1956 and is working as a Development Officer. It is clear from this definition that the Development Officer is a whole-time employee of the LIC. As provided by Rule the Development Officer, subject to the provisions made in these Rules, shall hold office by the same tenure and in the same manner as any other class of employee in the Corporation. Then there is a provision in Rule 8 which indicates that if the Development Officer does not conform to certain norms of expense limit (as defined in Rule 2(k), his service would be liable to be terminated. There are also provisions for imposing disincentives on a Development Officer, if he does not measure upto certain standards of performance. The whole scheme appears to be result-oriented and expects the Development Officer to work in a manner that would produce results or face disincentives, which feature unfortunately is not adopted in other services.

We now come to Rule 17 of the above Rules, which provides for incentive bonus. It lays down that incentive bonus under any scheme approved by the Corporation may be allowed to a Development Officer for any preceding year, if his cost ratio with reference to his annual remuneration in that year does not exceed twenty per cent of the eligible premium of that year. There was an incentive bonus scheme for Development Officers accordingly framed in the year 1978, which is also taken on record at the instance of both the sides in a common paper-book filed in these matters. The said scheme was known as "Scheme of Incentive Bonus to Development Officers of the LIC - 1978". It came into force on 30.4.1976 and, initially, was to remain in force till 31.12.1980. Admittedly, the scheme continued to operate even thereafter. Under Clause 4 of that Scheme, it was provided that incentive bonus in accordance with the scheme could be given to a Development Officer whose

cost ratio (i.e. ratio of his annual remuneration in an appraisal year to the eligible premium in that year) did not exceed 20 per cent in an appraisal year. Formula for determining basic Incentive Bonus was provided in Clause 5 of the Scheme, with a rider that the quantum of basic incentive bonus determined as per the formula prescribed under clause 5 could be increased or decreased in accordance with the provisions of sub-clauses (i) to (iv). These sub-clauses provided for, increase or decrease in the actual performance from the standard norms of performance; Agency Organisation for excess or deficit of the standard number of points specified in clause 8; recruitment of agents less than the number of agents specified in clause 9, etc. As provided in clause 10, the matters relating to the `net eligible premium', `lapsed premium', `standard norms of performance' and the like in respect of a Development Officer in the first, second or third year of service and any other connected matters were to be regulated by the administrative instructions issued by the Chairman from time to time.

On the subject of income-tax payable by the Development Officers on their earnings by way of additional conveyance and incentive bonus paid to them by the LIC, there was correspondence between the LIC and the CBDT, which is taken on record at the instance of and by consent of both the sides as admittedly genuine correspondence. In the letter from the LIC dated 29th September, 1986, the LIC had written to the CBDT as regards the incentive bonus as under:-

"As regards Incentive Bonus, we have taken note of your clarification in the matter. We are at present designing a new Incentive Bonus Scheme for our Development Officers where it might be possible to provide for a separate allowance or for a distinct/separate element of payment in the nature of reimbursement of expenses which, we know, are necessarily to be incurred in the process or earning that Incentive Bonus. As this would take some more time, we would request you to allow some relief, in the meanwhile, to our Development Officers on this account.

As you know, Incentive Bonus is a production-oriented income, inasmuch as, higher bonus becomes payable to a Development Officer on achieving higher production. When his actual performance is beyond the normal levels of performance expected of him, he has to incur

expenditure in respect of items such as (i) entertainment to agents/clients (ii) prizes declared in competition amongst his agents (iii) conveyance facilities to his agents, and (iv) office expenses such as rent, secretarial assistance, printing and stationery, postage, trunkcalls and telephone charges etc. The quantum of Incentive Bonus is decided taking into account factors such as the number of policies procured by a Development Officer, his agency organisation, the nature of territory operated by him i.e. whether rural or urban etc. These very same factors also influence the size of his expenditure.

We do not at present allow reimbursement or special allowance as such towards these items, it being understood that a Development Officer is required to spend a part of the Incentive Bonus on this account. It is therefore, proposed to certify, under Section 10(14), an amount upto 30% of the Incentive Bonus earned as necessary expenses that would have to be incurred and the internal system devised by us lays down guidelines to the operating offices regarding the percentage to be certified in each case having regard to factors referred to earlier.

We would be grateful if you could kindly examine the points clarified in this letter and issue suitable guidelines to your offices to accept the certification given by the LIC offices both with reference to Additional Conveyance Allowance and Incentive Bonus, as above."

On 28.11.1986, the Central Board of Direct Taxes while stating that necessary instructions were issued in respect of exemption under Section 10(14) of the Act for the additional conveyance allowance given to the Development Officers on the basis of a certificate appended to the salary certificate. As regards the exemption of incentive bonus the Board regretted its inability to accede to its request. However, the LIC was requested to formulate a scheme of special allowance with reference to the expenditure incurred in the course of official duties and inform the Board, so that the matter may be considered further.

In the letter dated 19th December, 1996, the Central Board of Direct Taxes on the question of

incentive bonus paid to Development Officers, again reiterated that the request of the LIC to notify Incentive Bonus under sub-clause (i) of clause (14) of Section 10 of the Income Tax Act, cannot be acceded to. It was stated that, "it may however, be added that the portion of the allowance certified as having been actually incurred in the performance of duties shall be exempt under the above provision".

In the other admitted communication from the CBDT to the LIC dated 12th March, 1997, while again reiterating that it was not possible to notify incentive bonus for exemption under Section 10(14)(i) of the Act, the CBDT wrote as under in paragraph 3 of it's letter.

"3. However, such portion of the "incentive bonus" which is actually spent by the Development Officers for duties of office can still be exempted from tax if the LIC makes the payment against the expenses incurred by the Development Officers by way of reimbursement of expenses. In that case, such reimbursement will not form a part of the "salary" of the Development Officers and only the taxable "incentive bonus" will appear in their salary certificates.

In view of the above, you may kindly issue appropriate instructions for modifying the aforesaid circular of the LIC."

It appears that thereafter, the Chairman of the LIC in exercise of powers conferred by Regulation 4 of the LIC of India (Staff) Regulations, 1960, issued instructions to give effect to the provisions of the Incentive Bonus Scheme - 1997 and the Reimbursement Scheme of expenses - 1997 for Development Officers of the Corporation. At the instance and by the consent of both the sides, the order alongwith the Incentive and Reimbursement Schemes are also placed on record, as admitted documents. This is relied upon, on behalf of the assessee, to show that there was in fact a reimbursement component in the Incentive Bonus Scheme right from the beginning as is reflected from the earlier correspondence, which now came to be split up by framing a separate scheme in respect of that reimbursement component of the incentive bonus. It was demonstrated from these two schemes that the reimbursement was connected with the performance of a Development Officer and both these schemes were inter-linked and further that the Development Officer was required to incur expenses for reaching the performance norms to become eligible for

incentive bonus and reimbursement, for development and building of clientele contacts, for recruitment of assistants and agents, for agents' training and for conducting prize competition among agents etc. It will be noted that even in the communication dated 29th September, 1986, which was relatable to the earlier incentive bonus scheme of 1978 (which would be relevant for the purpose of all these references), admittedly there was a clear mention of the fact that the quantum of incentive bonus which was given to the Development Officers was fixed keeping in view the factors namely (i) entertainment to agents/clients, (ii) prizes declared in competition amongst agents, (iii) conveyance facilities to it's agents and (iv) office expenses such as rent, secretarial assistance, printing and stationery, postage, trunkcalls and telephone charges etc. which the Development Officer was required to incur as expenditure in his performance beyond the normal level of performance expected of him.

8. In the above factual background, it was contended on behalf of the assessees by their learned Counsel that a portion of the incentive bonus was given specifically with a view to reimburse the Development Officers who were eligible to receive the incentive bonus to the extent of the expenditure incurred by by them in discharge of the duties of their office. It was contended that all receipts were not necessarily income and the meaning of real income cannot be stretched so as to cover receipts which could not, by any stretch of imagination, be held as income. It was contended that the part of the incentive bonus which was granted to the Development Officers to meet with the necessary expenses for discharge of their duties was not income and could not be treated as a part of their salary. Reliance was placed by the learned Counsel on the decision of the House of Lords in Pook Vs. Owen, reported in 45 TC 571, in support of their contention that reimbursement of expenses could not be treated as salary. It was further argued that the Development Officer when functioning for an achievement beyond the standard norms so as to become eligible for incentive bonus, was not acting as an employee but should be treated as an agent of the LIC. It was argued that this dual capacity was borne out from the fact that in the definition of `annual remuneration' of Development Officer incentive bonus was excluded and, further that, the incentive bonus was payable under an independent scheme in respect of the achievements, which went beyond the standard norms which alone were required to be satisfied by the Development Officer when he acted

as an employee. It was then argued that in any event since the portion of the incentive bonus included the expenditure component as declared by the LIC, the expenditure actually incurred by the Development Officer was required to be exempted under Section 10(14) straightway atleast upto the Assessment Year 1988-89 because the requirement of notifying such allowances intended to meet with expenses, came only from 1.4.1989 and prior to that all such expenses could straightway be exempted. The learned Counsel also referred to the decisions of various Tribunals and adopting their reasoning as a part of their arguments contending that as held by these Tribunals in their decisions (Bombay Bench, Hyderabad Bench, Chandigarh Bench, Pune Bench and Ahmedabad Bench), which are compiled in the paper book, the expenses incurred by the Development Officers out of the incentive bonus received by them were not income or salary and therefore, they were required to be deducted at the threshold itself. It was contended that in any event such income could be taxed as income from profession or business or other sources since it was not relatable to the discharge of duties by the assessees as Development Officers for which separate remuneration was provided and in which such incentive bonus was expressly excluded.

The learned Counsel Mr. Divetia while adopting the contention of the learned Counsel Mr. Mukesh Patel, further argued that the incentive bonus to the extent it was expended out of the portion which was intended to meet with the expenses was not salary. It was submitted that there was no real profit involved from such amount and therefore, it did not fall within the meaning of the expression "profits" in lieu of or in addition to salary or wages under clause (iv) of Section 17(1) of the Act. The learned Counsel read the decisions of CIT Vs. Kartikeya V. Sarabhai, reported in 156 ITR 509 and A. Nanda Kumar Vs. ITO, reported in 41 Taxman 73 in support of his contentions.

The learned Counsel Mr. S.N.Soparkar also contended that only receipts as reduced by the outgoings which were spent for earning the receipts could be treated as profits. He argued that what is to be taxed is income and not receipts and read the decision of the Hon'ble Supreme Court in CIT Vs. S.C. Kothari reported in 82 ITR 794 in support of his contentions.

All the learned Counsel argued that the Bombay High Court in CIT Vs. M.C.Shah, reported in 189 ITR 180 had not disturbed the decision of the Bombay Bench of the

ITAT in Narendra Patel's case, reported in 11 ITD 587, a copy of which is contained in the paper-book, and therefore, we should hold that the incentive bonus or commission received by the Development Officers assessees was not salary income, but income from business or profession. As can be seen from the order of the Bombay High Court, the High Court held that the finding of the Tribunal was a finding of fact raising no question of law.

9. The learned Counsel Mr. Pranav Desai and Mr. Mihir Joshi, who appeared for the Revenue, placed strong reliance on the decisions of the Andhra Pradesh High Court in K.A.Chaudary Vs. CIT, reported in 183 ITR 29, CIT Vs. B. Chinnaiah & ors. (supra); Orissa High Court in Govind Chandra Pani's case (supra) and Bijoy Kishore Kapoor's case (supra), Rajasthan High Court in CIT Vs. Motimal Mohnot, reported in 134 CTR 88, CIT Vs. Jagmohan Goyal, reported in 134 CTR 90, CIT Vs. Sheo Raj Bhatia, reported in 134 CTR 264 and Karnataka High Court in CIT Vs. M.D. Patil, reported in 144 CTR 150, in support of their contention that no part of incentive bonus could go out of the concept of salary and therefore, the only deductions to which the assessees were entitled, could be deductions under Section 16 and no amount could be deducted by way of reimbursement of expenses from the total incentive bonus received by the assessees. Mr. Joshi further contended that there was no bifurcation of the incentive bonus granted under the old scheme, which was relevant for the Assessment years in question. It was argued that even if a portion of the incentive bonus was treated as special allowance, it would still be income and would be profit in lieu or in addition to salary within the meaning of Section 17(1)(iv) of the Act and therefore, was chargeable to tax under the head "Salaries" in view of the provisions of Section 15 of the Act. It was argued by him that incentive bonus was the real income to the assessee and not just a notional income. The fact that some amount was spent by way of expenses from such income would not change its nature and it would remain a taxable income. It was contended that income is no less real because part of the total covers outlays for getting it. Mr.Joshi further argued that eventhough while reimbursement of expenses would not be income, reimbursement of expenses stated to be incurred for earning the income, cannot be described as reimbursement simpliciter. He however, with his usual candour, did not dispute the proposition that reimbursement of expenses which do not result in personal profit or gain would not be income while arguing that any other reimbursement should be treated as income, which

would be subject to statutory deductions and exemptions alone. He finally contended that the Development Officer was not obliged to expend any portion of the incentive bonus and it was open for him to pocket the entire amount and if in such background, expenditure is allowed to be deducted, it would result in different yard-sticks for Development Officers because they may or may not spend any of the amount from the incentive bonus earned by them.

The learned Counsel Mr. Desai argued that all receipts are income. He contended that the Income Tax Act contained provisions which would cover all possible receipts and incentive bonus was clearly a receipt which was income of the Development Officer. He relied upon the decisions in the cases of Mehboob Productions Pvt.Ltd. Vs. CIT reported in 106 ITR 789, Father Epharam Vs. CIT, reported in 176 ITR 78, Elel Hotels and Investments Ltd. and anr. Vs. Union of India, reported in 178 ITR 140 and CIT Vs. E.A. Ranendran, reported in 142 CTR 244 in support of his contention that entire incentive bonus should be treated as salary of the Development Officer.

10. We first deal with the contention of the assessees that the Development Officer should be taken to be acting in a dual capacity and that when he earns incentive bonus, he should be treated as not acting as an employee of the LIC, but in a capacity as an agent or an independent person doing work for LIC, in which event he would be entitled to deduct the expenses incurred for earning the incentive bonus. We find it difficult to subscribe to the proposition that the Development Officer acts in a dual capacity. As noted above, he is a whole-time employee of the LIC and in his functioning just as there are disincentives, there is also an incentive provided under the scheme for enabling him to earn additional amounts over and above his regular remuneration as Development Officer, from which such incentive bonus was expressly excluded. The test would be, was it a benefit which the Development Officer could have received only while continuing as an employee and answer is clearly `yes'. It is because the assessees were working as Development Officers as full time employees of the LIC that they could derive an additional reward by showing superlative performance above the standard norms. In Wicks V. Firth (Inspector of Taxes) reported in (1982) 2 All E Law Reports 9, the Court of Appeal, in a different context, observed that Section 61 of the Finance Act, 1976 under which assessment could be

made on the basis that a person employed in higher-paid employment, had by reason of his employment been provided for him or members of his family a benefit, applied to benefits which an employee would not have received unless he had been an employee, the fact of employment being one of the causes of the benefit being provided although it did not need to have been the sole or even the dominant cause. We therefore, reject the contention that the Development Officer received the incentive bonus in some different capacity on the basis that he was working in a dual role.

11. Now, coming to the main controversy involved, we may first refer to the relevant part of the definition of `income' in Section 2(24)(iiia), which clause was inserted by the Amendment Act of 1989 retrospectively with effect from 1.4.1962. It is provided, therein that " `income' includes any special allowance or benefit, other than perquisite included under sub-clause (iii), specifically granted to the assessee to meet expenses wholly, necessarily and exclusively for the performance of the duties of an office or employment of profit." It appears that the purpose of this inclusion was to ensure that such allowances are brought in for assessment unless exempted under any special provision of the Act such as Section 10(14).

The next relevant provision would be Sec. 10(14). Since the assessment years involved in this group of References range from 1983-84 to 1990-91, it will be appropriate to notice this exemption provision as it existed prior to 1.4.1989 and thereafter. Section 10(14) as it existed prior to 1.4.1989 reads as under:-

"10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included --

xxx xxx xx
xxx xxx xx xxx

(14) any special allowance or benefit, not being in the nature of an entertainment allowance or other perquisite within the meaning of clause (2) of Section 17, specifically granted to meet expenses wholly, necessarily and exclusively incurred in the performance of the duties of an office or employment of profit, to the extent to

which such expenses are actually incurred for that purpose."

Explanation : xx xx

After it's amendment with effect from 1.4.1989, the relevant provision of clause (14) of Section 10 read as under:-

"10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included--

(14)(i)any such special allowance or benefit, not being in the nature of a perquisite within the meaning of clause (2) of Section 17, specifically granted to meet expenses wholly, necessarily and exclusively incurred in the performance of the duties of an office or employment of profit, as the Central Government may, by notification in the Official Gazette, specify to the extent to which such expenses are actually incurred for that purpose;"

Again with effect from 1.7.1995, the words "as the Central Government may, by Notification in the Official Gazette specify" were substituted by the words "as may be prescribed", which were inserted with effect from 1.4.1989. These prescribed allowances were the allowances which are prescribed by Rule 2BB(1) of the Rules.

It will thus, be seen that prior to 1.4.1989 under Rule 10(14) the special allowances or benefits specifically granted to meet expenses incurred in performance of the duties of an office or employment of profit were exempted to the extent to which they were actually incurred for the purpose. Thereafter, in order to qualify for exemption such allowances or benefits had to be notified, and, later they were to be as prescribed under the Rules.

It will be noted that the definition under Section 2 of the Act would apply unless the context otherwise requires. The definition of `income' in Section 2(24), though inclusive, includes also the receipts which would be income in their normal sense and it is not a mere catalogue of receipts which otherwise would not be income, for example "profits and gains" at sub-clause (i). The income-tax will be chargeable in

respect of the total income of a person of a previous year as provided by Section 4. Such total income would be the total amount of income referred to in Section 5, computed in the manner laid down in the Act. It includes all income from whatever source derived by a person which is received or deemed to be received or accrues or arises or is deemed to accrue or arise to him. In computing the total income of a person certain types of incomes enumerated in Section 10 are required to be excluded by virtue of their exemption under that provision. Any salary due from an employer or paid or allowed to the employee and any arrears of salary paid or allowed to him would be income chargeable to income-tax under the heads "Salaries" as provided in Section 15. Therefore, under the head "Salaries" to be chargeable income, it should not only be income, but it should also be income of the nature indicated in Section 15 read with Section 17, which defines `salary'. Under Section 17(1) (iv), salary would include "any fees, commissions, perquisites or profits in lieu of or in addition to salary or wages". Any special allowance or benefit other than perquisite which are treated as income by virtue of clause 2(24) have not been separately mentioned in the definition of `salary' and can be classified as salary only if they are read in the expression "profits in lieu or in addition to salary or wages" because such type of income is by itself neither wages, nor fees, commissions, perquisites or profits in lieu of salary or wages. Merely because any special allowance or benefit granted to the assessee to meet with the expenses wholly, necessarily or exclusively for performance of his duties are treated as income by its extended meaning, they do not ipso-facto become salary. In order to be salary such income as per its extended meaning under Section 2(24), should become part of the profits of an employee in addition to salary. To the extent that such amount granted to the assessee for meeting with his expenses wholly necessarily and exclusively for the purpose of his duties are not actually spent by him, that portion of such income included in Section 2(24) will result in profits to the assessee in addition to his salary or wages.

12. Section 2(24) of the Act only adds to the concept of income the type of receipt which otherwise may not have been covered by that concept. It does not refer to the fact whether such expenses are incurred or not incurred. Such expenses whether incurred or not would still fall in this clause. Certain types of expenses falling within this artificial definition of income which are incurred out of the amount so granted are specifically exempted from being included in the total

income by virtue of Section 10(14). The type of such "incurred" allowances or benefits granted to the assessee if not exempted under Section 10 (14) would not thereby automatically become his salary. The receipt has to fall under the head "salaries" in order to become chargeable to tax and there comes the need to ascertain as to what part of it could be described as profits in addition to salary, which alone would be salary in its extended sense under Section 17(1)(iv) of the Act.

13. Provision of Section 10(14) as it originally stood, exempted the expenses actually incurred for the purpose for which the special allowances or benefit were specifically granted. However, as noted above, by the Income Tax Amendment Act, 1987, this clause was substituted with effect from 1.4.1989 and in place of exemption of all such expenses actually incurred out of any special allowance or benefit granted to the employee to meet with the expenses, it came to be confined to expenses actually incurred from the special allowances or benefits notified in the official Gazette by the Central Government or prescribed as per the later amendment. The effect of this amendment would be that for the assessment in respect of the earlier previous years (i.e. prior to 1.4.1989) to which this amendment did not apply, such expenses as were actually incurred from such any special allowance or benefit granted for the purpose, stood exempted while computing the total income of the assessee and the rest which were not so expended would be included in computation of his total income and therefore, to the extent they resulted in "profits in lieu of or in addition to salary or wages" to the assessee, so as to be called "salary" under Section 15 would become chargeable to income-tax under the head "Salaries". This result is in consonance with the concept of salary, which as held by the Hon'ble the Supreme Court in Gestetner Duplicators Pvt.Ltd. Vs. CIT reported in 117 ITR 1 at page 13, is a recompense for work done or services rendered. Section 15 does not render any amount assessable which would not have been assessed by virtue of the general conception of income or its statutorily extended meaning. It is very much doubtful whether Section 15 has the effect of bringing into charge any receipt which would not be brought into charge in any case either by virtue of the general conception of what constitutes income or its statutorily extended meaning under Section 2(24) and if the receipt does not fall in the general conception of income or its statutorily extended meaning, it would not be caught by the provisions of Section 15 of the Act.

14. The use of the word "profit" in the expression

profits in lieu of or in addition to salary or wages", itself involves a deduction of expenses properly incurred in realising the proceeds out of which the profits arises. Indeed, one cannot ascertain whether there is such a thing as profit or not unless all that expenditure which is necessary for the purpose of earning the receipts is deducted. If the entire receipt of the special allowance and benefits granted to meet the expenses for duty purposes included in Section 2(24) of the Act were straightway to be treated as salary, there was no easier way than to enumerate them under the definition of salary or within the meaning of profits in lieu of salary in Section 17 of the Act. This was not done since it would have otherwise violated the very concept of tax on income to the extent they really were not salary not being profits in lieu of or in addition to salary. In other words, no part of special allowance or benefits which is expended for the purpose for which it was granted and therefore has not resulted in any profit, can fall under the head "Salaries" even if it does not fall in the exemption granted by Section 10(14) of the Act. This result is in consonance with the concept of income which is to be distinguished from mere receipts or gross revenue. The tax is upon income and not on gross receipts as is borne out from the decisions of the Hon'ble Supreme Court in Badridas Daga Vs. CIT, reported in 34 ITR 10, Poona Electric Supply Co.Ltd. Vs. CIT, reported in 57 ITR 521 and of the Gujarat High Court in Mehboob Products Private Ltd. Vs. CIT, reported in 106 ITR 758 and also in CIT Vs. Bachubhai Nagindas Shah, reported in 104 ITR 551.

15. The concept of income is something more than that which simply comes in any economic activity as a receipt. From economist's view point, income would be the money value of the net accretion in one's economic power between two points of time, the true increase in the amount of wealth which comes to a person during a stated period of time. Income would therefore be an advantage having monetary value that a person derives from property, business or investment or by rendering services or labour or doing work or under a contract. Entry 82 of List I of the Seventh Schedule to the Constitution is a head of legislative power under which the Parliament can frame law with respect to "tax on income other than agricultural income", but the word "income" is not defined in the Constitution itself and as has been held, it is to be interpreted according to its natural and grammatical meaning and is thus, a word of broadest connotation. Therefore, not only the income which has actually accrued but also income which is supported by

the legislature to have notionally accrued would be included in the meaning of "income". This however, does not mean that the Parliament, by some strained interpretation as was sought to be put by the learned Counsel appearing for the Revenue on the provisions of Sections 15, 16 and 17, should be attributed with the intention of taxing as income a receipt which in no rational sense can be regarded as citizens' income. Therefore, though the statutory addition in the concept of income as reflected by Section 2(24) includes in the meaning of income, the allowances and benefits granted to meet the expenses for the purposes of duty, that by itself will not be conclusive to hold that such entire amount is chargeable to tax as salary, notwithstanding that it was expended to meet the expenses for which it was granted and resulted in no profit in addition to salary or in lieu thereof.

The deductions contemplated under Section 16 of the Act are to be made while computing the income chargeable under head "Salaries" and these statutory deductions are quite distinct from the removal of expenses incurred for the purpose from the receipt for working out the profits in lieu of or in addition to salary under clause (iv) of Section 17(1). The standard deductions were substituted for the separate deductions in respect of the items for which deductions were provided earlier under four different heads including deduction in respect of other expenditure incurred by the tax-payer which by the conditions of his service, he was required to spent out of his remuneration wholly, exclusively and necessarily in the performance of his duties. This was done with a view to simplify the assessment procedures of salaries of tax-payers and not with a view to deny the tax-payer keeping out reimbursement of expenses while computing profits in lieu or in addition to salary, which was a distinct matter altogether. This is borne out from paragraphs 20 and 21 of the memo explaining the provisions of the Finance Bill, 1974.

16. It will be noted that Section 2 (24) of the Act speaks of benefits and allowances granted to the assessee to meet with the expenses for the performance of duty and not the expenses incurred in the performance of duty. This is done with a view to see that under the guise of payment of special allowances/benefits granted to meet with expenses for performance of duty, there is no evasion of income-tax where it results in salary as defined, i.e. in the present context, profits in lieu of or in addition to the salary or wages. The resort to

this fiction created by the extended meaning of income under Section 2(24) was necessary to deal with the device to avoid legitimate taxation and not to treat the genuine expenses incurred for the purpose for which the special allowances/benefits were granted, as taxable, notwithstanding that no profit at all resulted therefrom to the employee. The extension of the meaning of income under Section 2(24) is therefore, not for the purpose of treating all reimbursements as taxable income, but to treat the receipts covered by it as income so that they could be taken into consideration to find out the income chargeable to income tax under the head "Salaries". The entire receipt of that nature does not by itself fall in Section 17(1) and cannot be read as an additional clause therein. It has necessarily to fall in one of the clauses of Section 17(1) and the closest it goes is to Clause (iv) thereof. The words granted to meet the expenses for the performance of duties in Section 2(24) mean that the allowances or benefits are given away to the employee for the expenses he is expected to meet. If the allowance was payable whether it was expended or not, it would be profit in the sense of profit or gain. When such special allowance or benefit is granted irrespective of the fact that it is incurred {which word is, as can be seen, absent in Section 2(24), while it occurs as an essential requirement in Section 10(14)}, then there is left, a scope for the employee to get a monetary advantage when he does not expend such amount or part thereof for the purpose for which it is granted. That is sought to be brought in the drag-net by the statutorily extended meaning of income under Section 2(24) leaving no scope for an argument that such receipt should not be treated as income at all. However, from this it cannot be inferred that genuine reimbursement of expenditure incurred would become income chargeable to tax though no profit or gain accrues to the employee. A reimbursement transfers from the employer to the employee, the burden of expenses actually incurred in the course of the employment while an allowance or benefit specially granted, is designed to compensate the employee because the employer does not wish to be under the obligation of meeting such expenses directly or indirectly. Therefore, where the expenses incurred are reimbursed, the amount of reimbursement would not be an allowance properly so-called. The reimbursement of the amounts spent by the employee out of his own pocket on entertaining agents of his employer would not amount to any profit to that employee. Thus reimbursement of expenses which does not result in profit or gain to the employee would not be a salary income chargeable to tax under Section 15 read with Sec. 17 of the Act.

17. The incentive bonus under the old Scheme of 1978 as is established had two components. It was to be paid only when the extra business was procured for the LIC. The incentive bonus contained remuneration for such extra results which component would admittedly come under the head salary being extra remuneration for the extra work that had resulted in more business to the LIC. If the entire incentive bonus was to be treated as remuneration, it would all be profit or gain to the employee. However, the facts proved clearly indicate that a part thereof was granted to the employee with a view to meet with the expenses that might have to be incurred by him as Development Officer for the discharge of his duty. Therefore, when the expenses are actually incurred by the Development Officer, from that component which may fall under Section 2(24) and be treated as income, in cases where such income does not fall in the exemption category under Section 10(14), it is the profit element alone which remains with the assessee that can be treated as salary, being profit in addition to salary or wages. As can be seen from the communication dated 12.3.1993 of the Government of India, Ministry of Finance, Department of Revenue, CBDT to the LIC, even if no portion of the allowance qualified for exemption unless notified under Section 10(14)(i) of the Act, the incentive bonus which was actually spent by the Development Officers for duties of office could still be exempted from being charged, if the LIC made the payment against the expenses incurred by the Development Officers by way of reimbursement of expenses and in that case such reimbursement would not form a part of the salary of the Development Officers and what is rightly described therein as "taxable incentive bonus" will alone appear in their salary certificates not by virtue of it being labelled as salary in the certificate, but because it would actually be the salary. It requires no elaboration to state that mere label put on the receipt is not enough. Its nature alone will be decisive.

The LIC is a statutory body and it is borne out from the letter dated 29th September, 1986 addressed to the Central Board of Direct Taxes, which has been quoted hereinabove, that four factors mentioned therein had gone into fixing the quantum of incentive bonus. No separate reimbursement or special bonus towards the item of expenditure were being given at that time, because, as is apparent from the said letter, a part of the incentive bonus itself was designed to meet with such expense. When the quantum of the incentive bonus given to the Development Officer admittedly included a portion of

amount to enable the Development Officer to meet with their expenses for the discharge of their duties, that would amount to grant of special allowance to meet such expenses. The LIC had proposed to certify 30 per cent of the incentive bonus earned as necessary expenses that would have to be incurred, stating that the internal system devised by it laid down guidelines to the operating offices regarding the percentage to be certified in each case having regard to the factors referred in the said letter, which influenced the size of expenditure incurred by a Development Officer.

As noted above, Section 10(14) as it stood prior to 1.4.1989 exempted any special allowance or benefit not being an allowance or other perquisite under clause (2) of Section 17, specially granted to meet expenses wholly necessarily or exclusively incurred in performance of the official duties to the extent to which they are actually incurred. Therefore, in all cases governed by that provision as it stood prior to 1.4.1989 when the requirement of Government Notification (later changed to `as may be prescribed') was superimposed, all the expenses designated for the purpose and actually incurred stood exempted and could not be included in the total income of such assessee. Since only 30 per cent of the incentive bonus earned was intended to meet with such expenses, no higher amount could be claimed by such assessees as expenditure incurred out of the special allowance given for that purpose. That exemption applied only to the extent the expenses were actually incurred for the purpose for which they were granted. If any amount was not so expended out of the amount of 30 per cent incentive bonus earned, and as a result, it ended as profit to the assessee - Development Officer, that would be "profits in addition to his salary" under Section 17(1)(iv) and therefore, will fall in the head of income under the salaries.

18. Even in cases falling after 1.4.89 when Section 10(14) came to be amended and the exemption was confined only to notified allowances (later amended with effect from 1.4.89 as prescribed allowances), wherein the income covered by Section 2(24) in the nature of 30 per cent of the incentive bonus earned is not exempted by the provisions of Section 10(14), such allowances as are income within the meaning of Section 2(24), cannot be straightway treated as salary and on the basis of what we have said hereinabove, it will have to be ascertained whether the expenditure intended to be met was actually incurred and if so incurred whether any part of such special allowance still remained with the employee so as

to be described as profit in addition to his normal salary and wages. This exercise will have to be confined only to 30 per cent of the incentive bonus earned which alone was intended by the LIC as a special allowance granted to the Development Officer to meet with the expenses for the discharge of their duties of office and would therefore be special allowance specifically granted to meet with the expense for the discharge of duty. If out of such 30 per cent of the incentive bonus earned, any amount is not actually expended for the purpose intended, then there would be no question of reimbursing any sum which is not reimbursible and that part will be profit and gain to the assessee and will be treated as a salary under Sec.17(1)(iv) of the Act. The idea underlying such reimbursement properly so-called is to provide restoration of equivalent for something paid or expended and not to cause profit or gain to the employee. Reimbursement of personal expenses which only result in personal profit or gain to the employee obviously cannot be omitted while working out the profits in addition to salary or wages.

19. Even if the expenses component of the incentive bonus was not to be treated as a special allowance specifically granted to the assessee within the meaning of Section 2(24), the receipt of the entire incentive bonus will have to be examined as something given in addition to the salary or wages of the Development Officer, especially when it is specifically kept out of the `annual remuneration' of Development Officers as defined in the Rules regulating the terms and conditions of their service. Even in such case, it will have to fall in one of the categories named in section 17(1) for being put under the head income from "salaries". There again the closest it goes is to Section 17(1)(iv) as "profits in lieu of salary or in addition to salary". Therefore, the assessees' profit in that case also will have to be worked out which cannot be done unless the expenditure which is necessary and was properly incurred for the purpose of earning the income, is deducted therefrom. The Development Officer can still demonstrate that he was required to incur the expenditure as a part of his duty to enable himself to realise the proceeds of the Incentive Bonus. Thus, for working out the amount of profit in addition to salary, there would be deducted from the gross incentive bonus, expenses properly incurred in realising it. This deduction would be warranted to reach the profit element cannot be denied to the assessee employee on the ground that statutory deductions are already provided in Section 16. After all the tax under the Act is on income as a thing and not on

the person who receives it. There is a fallacy in equating deductions necessary to work out the profit or gain element of the receipt and the statutory deductions provided in the Act. Exemptions of income from tax and statutory deductions allowed (which also are in the nature of exemptions in their effect) are privileges not matters of right but are allowed only as a matter of legislative grace. The subtractions made from the receipts to ascertain the income properly so called would not be the same thing as causing statutory deductions to be made out of income. It would be the right of a citizen to ensure that any part of his receipts as are really not his income in any sense of the word intended for taxing purpose, is not taken away by taxing that portion. Therefore, working out the income which can be assessed to tax by making substractions of the non-income part of the receipt is not a matter of legislative grace but, citizens' own right unlike effecting statutory deductions from the income so worked out to which the taxing law is intended to reach. There is therefore, no merit in the contention that no deduction of expenses properly incurred for realising of the receipt could be made for working out profits in lieu of or in addition to salary in case of the employees because statutory deductions are provided for in Section 16 of the Act.

20. We have reached our conclusions in the light of the statutory provisions of the Act without any need being felt to resort to the ratio of the decision in Pook Vs. Owen (supra), around which the debate of both the sides thrived throughout the prolonged hearing of this group of matters. We however, do not for a moment intend to rob that land-mark decision containing immense wisdom of the five law Lords, of its importance, and, as observed by Lord Reid in Taylor Vs. Provan (1974) 1 All ER 1201 at 1207, the fact that His Lordship did not find it easy to discover the ratio of Owen's case did not diminish the authority of the decision. The two questions involved therein were whether the travelling allowances were properly included in the appellant's emoluments for the purpose under Schedule "E" and was the actual cost of journey deductible from his emoluments under the relevant Rule. The decision was rendered in context of Schedule "E" of the Income Tax Act, 1952 and other provisions which may briefly referred. Schedule "E" provided that tax under that schedule shall be charged in respect of any office or employment, on emoluments therefrom which fall under Cases I, II and II. Para 1(1) of Schedule 2 of the Finance Act, 1956 provided, inter-alia, that such tax except as provided

therein was chargeable on the full amount of the emoluments, subject to the deductions only as may be authorised by the Income Tax Acts and the expression "emoluments" shall include all salaries, fees, wages, perquisites and profits whatsoever. Rule 7 of the Rules applicable to Schedule "E" in Schedule 9 to the Income Tax Act, 1952, in substance, provided that if the holder of office or employment of profit was necessarily obliged to incur and defray out of the emoluments thereof the expenses of travelling in performance of the duties of the office or employment .... or otherwise to expend money wholly, exclusively and necessarily in the performance of the said duties, there may be deducted from the emoluments to be assessed, the expenses so necessarily incurred and defrayed. In the context of these provisions Lord Guest observed that if the proper test of `emolument' is that the sum is a reward for service, then the travelling allowance paid to Dr.Owen were not emoluments and to say that Dr. Owen was to that extent "better of" was not to the point. It was held by Lord Guest that the allowances were used to fill a hole in his emoluments by his expenditure on travel and in his Lordship's view, the travelling allowances were therefore not emoluments. It was held that if the allowances were not emoluments, no question arose as to deductibility of the actual sums expended on the mileage allowed. However, there still remained the question of the extra expense for which Dr.Owen was not indemnified but had to pay himself and it was held by Lord Guest distinguishing the ratio of Ricketts Vs. Colquhoun (1925 10 TC 118) that the travelling expenses were necessarily incurred in the performance of the duties of his office, on the finding of fact that there were two places where his duty was performed , `the hospital' and over his `telephone in his consulting room'. Lord Pearce in a separate opinion emphatically observed that if the argument of the Crown is correct, the assessee would admittedly pay tax on all reimbursements or partial reimbursements and such a situation would obviously be unjust. "If it be correct, it is clear that something has gone seriously wrong with the enactments or the case law or both. It must be disturbing to the citizen if such a situation can arise. Such an injustice is not in the interests of anyone certainly not of the Revenue, since injustice causes evasion" observed the law Lord. The reimbursements of actual expenses were held by Lord Pearce, clearly not intended by "salaries", "fees", "wages", or "profits". The contention that such reimbursements are perquisites was also rejected on the ground that "perquisite" has a known normal meaning , namely - personal advantage, which would not apply to a mere reimbursement of necessary

disbursements. Lord Donovan also held that the definition of "emoluments" as including "all salaries, fees, wages, perquisites, and profits whatsoever" certainly gave no impetus towards the view that it covers sums paid to an employee simply in reimbursement of expenses incurred in carrying out his duties, nor do the dictionary definition of the word namely "profit or gain, advantage, due, reward, remuneration, salary' (citing Murray's English Dictionary and The Shorter Oxford Dictionary. Lord Donovan came to this conclusion observing: "on the footing that the travelling expenses paid to Dr.Owen simply reimbursed what he had spent (or part of what he had spent) on travelling in performance of his duties, I do not think they should be regarded as emoluments of his employment within the meaning of Schedule - E". As regards the excess of the expenditure over what Dr.Owen received in reimbursement as an allowable expense from his salary (over which Lord Pearce did not express himself) Lord Donovan held that no deduction under Rule 7 of Schedule "E" could be allowed because the expenses were not "necessarily" incurred and that to qualify for deduction the expenses must be such as any holder of the employment would be bound to incur and further that it was not enough that they are incurred simply because the employee happens or chooses to live at some distance from his work.

Thus, three of the five Law Lords held that reimbursement of the travelling expenses that Dr.Owen incurred for the performance of duties was not emoluments as they did not amount to any reward for service and were not "salaries, fees, wages, perquisites or profits". Lord Wilberforce while finding it difficult to see how reimbursement of a non-deductible expense was something other than an emolument, decided in the assessee's favour by agreeing with the judgement of Lord Denning M.R. that the Commissioners had directed themselves quite properly in finding that "his (Dr.Owen's) travelling expenses to and from the hospital or to and from an emergency were wholly, exclusively and necessarily incurred or expended in the duties of that office", and holding that on that finding it was entirely proper for Dr. Owen to be allowed his expenses against the assessment. Lord Pearson on this aspect held that the principle established in Ricketts Vs. Colquhoun was applicable to the case and it did not permit deduction of the travelling expenses in making the assessment under Schedule "E". On the question whether reimbursement was emoluments, it was held that reimbursement of travelling expenses or car allowance was a benefit and was a sum of money which according to Lord Pearson was a perquisite, a

profit, an emolument. His Lordship however observed that there is a quite different position when the employee incurs an expense in performing the duties of employment - e.g. making a journey from the head office to branch office and back to the head office, or buying stamp and stationery for the firm - and has it reimbursed to him there is no benefit no profit or gain to the employee and he does not receive any emoluments. These observations in the dissenting judgement of Lord Pearson recognise the principle that reimbursement of expenses which do not result in any profit or gain to the employee, cannot be treated as an emolument.

The ratio of the majority in Dr.Owen's case is therefore that the sums paid for travelling expenses to the employee being reimbursements of actual expenses were not part of his emoluments on that count. We therefore feel reassured on our holding in context of the provisions of our law that the grant of allowances to meet with the expenses for the duties of office or employment even if falling within the extended meaning of income under Section 2(24), would not straightway be salary unless they fall within the definition of salary under Section 17(1) and reimbursement of expenses which does not result in personal profit or gain under Section 17(1)(iv) so as to be called profits in lieu or in addition to salary, would not be salary so as to be chargeable to tax under Section 15 of the Act. The variety of views in Dr.Owen's case, in fact, emboldened us to approach the matter as we did only in the context of the provisions of the Act without straightway resting on the ratio of a decision rendered in context of the statutory provisions in a foreign law which are not entirely similar to ours. The speeches in the said decisions show the way in which judges look at cases and in that sense are useful and suggestive but in the last resort each case must be brought back to the test of the statutory provisions.

21. For the reasons that we have given hereinabove, we find it difficult to subscribe to the opposite view reflected in the decisions of the Andhra Pradesh, Orissa, Rajasthan and Karnataka High Courts, which were fully read before us. It is not necessary for us to analyse these decisions and we feel that the reasoning that we have adopted is sufficient to indicate the justification for the view that we are taking.

We therefore answer the aforesaid references as follows:-

1. ITR No. 54/93:

We hold that the Appellate Tribunal was right in directing the appellate authority to allow the incentive bonus as deduction, but only to the extent of reimbursement of expenses actually incurred upto the maximum limit of thirty per cent of the incentive bonus earned by the assessee and that it was right in including the net amount after such deduction in the salary income. The question is accordingly answered in the affirmative against the Revenue and in favour of the assessee.

2. ITR No. 272/93:

We hold that the Appellate Tribunal was right in holding that the CIT was not justified in directing the Assessing Officer to withdraw the deduction allowed by him and further hold that deduction only to the extent of reimbursement of expenses actually incurred upto the maximum limit of thirty per cent of the incentive bonus earned by the assessee, is permissible. The question is accordingly answered in the affirmative against the Revenue and in favour of the assessee.

3. ITR 121/96:

We hold that the Tribunal committed an error in holding that no deduction was available to the assessee as expenses out of the incentive bonus received by him as Development Officer. We hold deduction only to the extent of reimbursement of expenses actually incurred upto the maximum limit of thirty per cent of the incentive bonus earned by the assessee, is permissible. The question is accordingly answered in the negative against the Revenue and in favour of the assessee.

4. ITR No. 15/97:

We hold that the Tribunal committed an error in holding that no deduction was available to the assessee as expenses out of the incentive bonus received by him as a Development Officer of the LIC and further hold that the assessee was entitled to claim such deduction only to the extent of reimbursement of expenses actually incurred upto the maximum limit of thirty per cent of the incentive bonus earned by the assessee. The question is

accordingly answered in the negative against the Revenue and in favour of the assessee.

5. ITR No. 19/97:

We hold that the Tribunal committed an error in holding that no deduction was available to the assessee as expenses out of the incentive bonus received by him as a Development Officer of the LIC and further hold that the assessee was entitled to claim such deduction only to the extent of reimbursement of expenses actually incurred upto the maximum limit of thirty per cent of the incentive bonus earned by the assessee. The question is accordingly answered in the negative against the Revenue and in favour of the assessee.

6. ITR No. 132/96:

We hold that the Tribunal committed an error in holding that entire incentive bonus earned by the assessee as Development Officer of LIC was part of salary within the ambit of Section 17 of the Act and no deduction on account of expenses were permissible and further hold that the assessee was entitled to claim such deduction but only to the extent of reimbursement of expenses actually incurred upto the maximum limit of thirty per cent of the incentive bonus earned by the assessee. The question is accordingly answered in the negative against the Revenue and in favour of the assessee.

7. ITR No. 49/97:

We hold that the Tribunal committed an error in holding that entire incentive bonus earned by the assessee as Development Officer of LIC was part of salary within the ambit of Section 17(1)(iv) of the Act and the only deduction admissible is under Section 16(1) of the Act and further hold that the assessee was entitled to claim such deduction but only to the extent of reimbursement of expenses actually incurred upto the maximum limit of thirty per cent of the incentive bonus earned by the assessee. The question is accordingly

answered in the negative against the Revenue and in favour of the assessee.

All these References stand disposed of accordingly with no order as to costs.

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